

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-RB-1568 (PAC)

COLORADO CROSS-DISABILITY COALITION, a Colorado corporation,
LAURA HERSHEY, and
ROBIN STEPHENS,

Plaintiffs,

v.

SILVER CINEMAS ACQUISITION COMPANY, and
LICHTENBERG CORPORATION OF DELAWARE,

Defendants.

AMENDED COMPLAINT

Plaintiffs Colorado Cross-Disability Coalition, Laura Hershey and Robin Stephens, by and through their attorneys, Fox & Robertson, P.C. and Kevin W. Williams, hereby bring this Complaint against Silver Cinemas Acquisition Company (“Silver Cinemas”), operator of the Mayan Theatre (“the Mayan”), the Esquire Theatre (“the Esquire”) and the Chez Artiste Theatre (“Chez Artiste”), and Lichtenberg Corporation of Delaware (“Lichtenberg”), owner of the Mayan.

INTRODUCTION

1. The Americans with Disabilities Act (“ADA”) was signed into law by President George H. W. Bush on July 26, 1990. Not long after its effective date, Plaintiffs Laura Hershey and Robin Stephens noticed that the Mayan was physically inaccessible to patrons who used

wheelchairs. They notified the operators of the Mayan, Landmark Theatre Corporation. On information and belief, Silver Cinemas is the successor in interest to the entity then operating the Mayan. Ultimately the United States Department of Justice intervened in this process. The Mayan's operators agreed to make changes in the way they served customers with disabilities.

2. Almost ten years later, the Mayan continues to operate in violation of the ADA. In addition, in approximately 1998, the Mayan was renovated. Rather than using this as an opportunity -- as required by the ADA -- to increase wheelchair access, Silver Cinemas, or its predecessor in interest, removed at least one area of accessible seating, significantly decreasing accessibility.

3. When Plaintiffs called this decrease in accessibility to a manager's attention, the manager first denied it and then made rude, flippant and racist comments in response to Plaintiffs' attempts to explain the problem.

4. Silver Cinemas operates at least two theaters, the Mayan and the Esquire, which show movies in upstairs auditoria which are not accessible to patrons who use wheelchairs. Despite being required to do so under the ADA, Silver Cinemas refuses to establish a film rotation schedule that provides reasonable notice to the public as to the location and time of accessible showings.

JURISDICTION

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

6. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

PARTIES

7. Plaintiff Colorado Cross-Disability Coalition (“CCDC”) is a Colorado non-profit corporation whose members are persons with disabilities and their nondisabled allies. As such, CCDC is an entity in a known relationship with and/or association with individuals with known disabilities.

8. Plaintiff Laura Hershey is and was at all times material hereto a resident of Colorado. Ms. Hershey has spinal muscular atrophy and is, as a result, substantially impaired in several major life activities. She requires a power wheelchair for mobility.

9. Plaintiff Robin Stephens is and was at all times material hereto a resident of Colorado. Ms. Stephens has cerebral palsy and is, as a result, substantially impaired in several major life activities. She requires a power wheelchair for mobility.

10. Defendant Silver Cinemas is incorporated under the laws of Delaware with its principal place of business located at 2222 South Barrington Avenue, Los Angeles, CA 90064. Defendant is registered to do business in Colorado. Defendant operates the Mayan, located at 110 Broadway in Denver, Colorado; the Esquire, located at 590 Downing Street in Denver, Colorado; and the Chez Artiste at 2800 South Colorado Boulevard in Denver, Colorado. Collectively, the Mayan, the Esquire and the Chez Artiste are known as “Landmark Theatres.” On information and belief, Silver Cinemas is a successor in interest to Landmark Theatre Corp., a Delaware corporation, Landmark Theatre Corporation, a California corporation, and/or Silver Cinemas, Inc., a Delaware corporation. On information and belief, Silver Cinemas does business as “Landmark Theatres,” employs many of the same people as its successor corporations and

maintains its principal place of business at the same location as Landmark Theatre Corp. Silver Cinemas is a wholly owned subsidiary of Silver Holdco, Inc., a Delaware corporation, which is owned by privately held funds managed by Oaktree Capital Management, LLC. On information and belief, Silver Cinemas, doing business as “Landmark Theatres” operates many other theaters in cities throughout the United States.

11. Defendant Lichtenberg is incorporated under the laws of Delaware with its principal place of business at 147 West Lyman Avenue, Winter Park, LA 32789. Defendant is registered to do business in Colorado. Lichtenberg owns the Mayan, located at 110 Broadway in Denver, Colorado. Lichtenberg is the successor in interest to Harland Financial Services of Denver, Ltd. Lichtenberg leases the Mayan to Silver Cinemas, and Lichtenberg’s predecessor in interest, Harland Financial Services of Denver, Ltd., leased the Mayan to Silver Cinema’s predecessors in interest.

FACTS

1. The Mayan is a three-screen theater. Two of its three screens are on the second floor and are not served by an elevator. Those screens, therefore, are not accessible to individuals who use wheelchairs, including Plaintiffs Hershey and Stephens.

2. The Esquire is a two-screen theater. One of its two screens is on the second floor and is not served by an elevator. That screen, therefore, is not accessible to individuals who use wheelchairs, including Plaintiffs Hershey and Stephens.

3. The Chez Artiste is a three-screen theater. All of three screens are located on the first floor.

4. Prior to approximately 1999, the first floor screen at the Mayan had three seating areas in which people who used wheelchairs could sit: one each on the right and the left in the rear of the theater; and one in the center of the theater (the “center accessible seats”), approximately halfway between the screen and the back of the theater.

5. On or about Friday, August 2, 2002, Ms. Hershey and Ms. Stephens, along with their friend Kathy Bougher who does not use a wheelchair for mobility, went to the Mayan to see a film.

6. The center accessible seats had been replaced with fixed seats that Ms. Hershey and Ms. Stephens were unable to use.

7. The only places available for Ms. Stephens and Ms. Hershey to sit were in the rear, a less desirable area because it is closer to the light and noise coming from the lobby, it is farther from the screen, and it is accessible only by a steep and somewhat dangerous ramp.

8. In addition, the rear seating areas do not have fixed seats that would allow Ms. Stephens and Ms. Hershey to sit next to their friends and companions who do not use wheelchairs.

9. Ms. Hershey and Ms. Stephens went back out to the lobby to talk with Sasha Webb, a manager of the Mayan.

10. At first, Ms. Webb denied that the center wheelchair seats had been removed, and asserted that they were still there.

11. Only after Ms. Webb went into the theater and saw that this was not so, would she admit this.

12. Ms. Hershey attempted to explain to Ms. Webb that other customers have unlimited choices of seats, especially with respect to how close they sit to the screen and how far from the lobby. Customers in wheelchairs used to have two choices, which the theater had reduced to one: the back.

13. Ms. Webb insisted that customers who use wheelchairs have two choices: in the back on the left, or in the back on the right.

14. Ms. Hershey attempted to explain to Ms. Webb that the situation was discriminatory using an analogy: Ms. Hershey stated that it was as if the Mayan had posted a sign saying that Black people had to sit in the back row of the theater.

15. Ms. Webb replied, “Yeah, we make *them* sit back there too.”

16. Outraged by this extremely distasteful comment, Ms. Hershey gave up trying to talk to the manager. Ms. Hershey, Ms. Stephens and Ms. Bougher returned their movie tickets and snacks, got their money back and left.

17. The first floor theater at the Mayan has approximately 419 seats.

18. The first floor theater was renovated in or about 1998, and Silver Cinemas’ predecessor in interest, doing business as Landmark Theatres, replaced the seating.

19. The accessibility and usability of the Mayan was decreased, among other ways, by eliminating the center accessible seats.

20. Some time between August 2, 2002, and August 14, 2002, Silver Cinemas removed fixed seating in or near the center of the first floor theater.

21. The Mayan provides parking for theater patrons in a parking lot on Lincoln Street,

approximately one to two city blocks from the Mayan and behind the Mayan on the same city block during certain restricted times. None of these parking spaces is designated as accessible parking for patrons who use wheelchairs, and none of these parking spaces provides sufficient space or access aisles for patrons who use wheelchairs to enter and exit their vehicles.

22. On information and belief, Defendant Lichtenberg owns and operates the parking spaces on the same block as the Mayan and leases those spaces to Defendant Silver Cinemas and may own and operate the parking spaces on Lincoln Street and may lease those spaces to Defendant Silver Cinemas.

23. The Mayan has a café available for patrons on the upstairs level which is not accessible to patrons who use wheelchairs. On information and belief, goods, services, privileges and accommodations are afforded to patrons at the upstairs café which are not afforded to patrons downstairs.

24. The Mayan has a concession stand in the lobby area downstairs. The customer service counter at this concession stand is not accessible to patrons who use wheelchairs.

25. The Mayan has a ticket booth where tickets may be purchased. The customer service counter at this ticket booth is not accessible to patrons who use wheelchairs.

26. The Mayan provides rest room facilities to patrons. There is a men's restroom and a women's rest room downstairs and a men's rest room and a women's rest room upstairs. The rest rooms are not accessible to patrons who use wheelchairs.

27. On information and belief, the Mayan contains other architectural barriers to persons who use wheelchairs.

28. Generally, at any given time, each of the three screens at the Mayan is showing a different movie.

29. Generally, at any given time, each of the two screens at the Esquire is showing a different movie.

30. Because two of the screens at the Mayan are inaccessible to Ms. Hershey, Ms. Stephens and patrons who use wheelchairs, they can see only one of the three films being shown at the Mayan.

31. Because one of the screens at the Esquire is inaccessible to Ms. Hershey, Ms. Stephens and patrons who use wheelchairs, they can only see one of the two films being shown at the Esquire.

32. Silver Cinemas advertises the movies showing at the Mayan and the Esquire in a number of media, including print and Internet, and on large marquees prominently displayed above the theater entrances.

33. Silver Cinemas' print and Internet advertising and publicity do not include advance information concerning which movies will be showing in the first floor accessible theaters. Nor do the theater marquees indicate which films are currently playing in the first floor theaters. This makes it difficult for movie patrons who use wheelchairs to plan their movie-going in advance, as patrons who do not use wheelchairs are able to do. Members of the general public who use wheelchairs are not provided with prior notice of which movie showings are accessible.

34. On information and belief, Silver Cinemas and/or its predecessor in interest has

occasionally been willing to move films from a second floor screen to the first floor screen with twenty-four hours notice. Silver Cinemas is not willing to do this, however, on weekends.

Silver Cinemas does not advertise or publicize information about moving films between upstairs and downstairs theaters to the general public. Movie patrons who use wheelchairs are not able to attend the movie of their choice on weekends, a very popular time to attend movies. Movie patrons who do not use wheelchairs are able to attend the movie of their choice on any day of the week.

35. The Esquire provides wheelchair seating in the rear of the downstairs theater and in locations in or about the center of the downstairs theater. The rear seating locations have no adjacent companion seating and insufficient space for wheelchair seating.

36. The Esquire and the Chez Artiste provide customer service counters which are not accessible to patrons who use wheelchairs.

37. The Esquire and Chez Artiste provide rest room which are not accessible to patrons who use wheelchairs.

38. On information and belief, the Esquire and Chez Artiste do not provide sufficient accessible parking for patrons who use wheelchairs.

39. On information and belief, Silver Cinemas and/or its predecessor in interest have made renovations to the Esquire and the Chez Artiste.

40. Silver Cinemas and/or its predecessor in interest have used wheelchair seating locations for the storage of equipment including without limitation spot lights during movie showings open to the public.

41. CCDC's members include individuals with disabilities and their friends, relatives and allies who attend movies at the Mayan, the Esquire and the Chez Artiste.

42. CCDC's purpose is to work for systemic change that promotes independence, self-reliance, and full inclusion for people with disabilities in the entire community. As part of that purpose, CCDC seeks to ensure that persons with disabilities have access to -- and do not encounter discrimination in -- public accommodations. CCDC engages in extensive outreach as well as advocacy and educational efforts to promote access for and combat discrimination against people with disabilities. This effort and this purpose have been and continue to be adversely affected by Defendants' violations of the ADA.

43. Defendants' actions have caused and continue to cause distinct, palpable, and perceptible injury to CCDC.

44. CCDC has devoted resources, which could have been devoted to its other outreach, advocacy, and educational efforts, to communicating with Silver Cinemas and its predecessor in interest in an attempt to secure full and equal enjoyment of their theater for its members.

45. Defendants' discrimination has been and continues to be a barrier to the full participation of persons with disabilities and, therefore, frustrates CCDC's ability to achieve full inclusion for persons with disabilities. For example:

- a. Defendants' discrimination prevents persons with disabilities from obtaining the full and equal enjoyment of the privileges, services, and accommodations of the Mayan, the Esquire and the Chez Artiste.

- b. Defendants' discrimination sends a message to persons with disabilities and their companions that they are not wanted at Defendants' theaters; and Defendants' discrimination perpetuates the segregation of people with disabilities and sends the messages that such segregation continues to be acceptable at this time.

46. Defendants' discrimination has required and continues to require CCDC to make a greater effort -- and to allocate resources -- to educate the public that such discrimination is wrong and otherwise to counteract the adverse impact of such discrimination. This perceptibly impairs CCDC's counseling, advocacy, educational, and training missions.

47. CCDC also has devoted and continues to devote resources -- including but not limited to those devoted to the present lawsuit -- to identifying and counteracting the sources of discrimination in the community, including that of the Defendants.

48. CCDC's injuries -- including without limitation those described herein -- are traceable to Defendants' discriminatory conduct alleged in this Complaint and will be redressed by the relief requested in it.

49. CCDC's members have been injured and will continue to be injured by Defendants' discrimination. Plaintiffs Laura Hershey and Robin Stephens are members of CCDC.

50. The elimination of discrimination, such as that of Defendants, and the integration of persons with disabilities into the community are at the core of CCDC's organizational purpose.

51. The participation of individual CCDC members in the lawsuit is not required either to resolve the claims at issue or to formulate relief.

52. Plaintiffs have been damaged and will continue to be damaged by Defendants' discrimination.

CLAIM FOR RELIEF
(Violations of the Americans with Disabilities Act)

53. Plaintiffs reallege and incorporate by reference the remainder of the allegations set forth in this Complaint as if fully set forth herein.

54. The Mayan, the Esquire and the Chez Artiste are motion picture houses and/or theaters and are therefore places of public accommodation as defined in 42 U.S.C. § 12181(7)(C).

55. Defendant Silver Cinemas leases and operates the Mayan, the Esquire and the Chez Artiste.

56. Defendant Lichtenberg owns the Mayan.

57. Defendants have discriminated against Plaintiffs on the basis of disability.

Defendants' discriminatory conduct includes but is not limited to:

- a. Discriminatory exclusion and/or denial of goods, services, facilities, privileges, advantages, accommodations, and/or opportunities;
- b. Provision of goods, services, facilities, privileges, advantages, and/or accommodations that are not equal to those afforded non-disabled individuals;

- c. Directly and/or through contractual or other arrangements, utilizing standards or criteria or methods of administration that have the effect of discriminating on the basis of disability;
- d. Failing to make reasonable modifications in policies, practices, and/or procedures as necessary to afford the goods, services, facilities, privileges, advantages, and/or accommodations of the theaters to individuals with disabilities;
- e. Failing to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the theaters and facilities are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs;
- f. Failing to make alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities; and/or
- g. Failing to make the theaters and facilities accessible to individuals with disabilities where it would be readily achievable to do so.

58. As such, Defendants discriminate and, in the absence of the injunction requested herein, will continue in the future to discriminate against Plaintiffs on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, accommodations and/or opportunities of the theaters and facilities in violation of Title III of the

Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. and/or its implementing regulations.

59. Plaintiffs have been damaged and will continue to be damaged by this discrimination.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. That this Court issue an order declaring the Defendants to be in violation of the Americans with Disabilities Act;
3. That this Court issue an injunction ordering the Defendants to bring the Mayan, the Esquire and the Chez Artiste into compliance with the Americans with Disabilities Act and to continue to operate these theaters in compliance with the Americans with Disabilities Act;
4. That this Court award Plaintiffs their reasonable attorneys' fees and costs; and
5. That this Court award such additional or alternative relief as may be just, proper and equitable.

Respectfully submitted,

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